

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DESERET TRUST COMPANY, a Utah  
non-profit corporation, as successor-trustee  
of the MELANIE L. BASTIAN TRUST  
dated July 25, 2001, as amended, C.  
RICHARD BASTIAN, an individual,  
ROBERT A. BASTIAN, an individual,  
DARREN B. BASTIAN, an individual, and  
JEFFREY BASTIAN, an individual

Plaintiffs,

v.

UNIQUE INVESTMENT  
CORPORATION, a California corporation,  
JOHN MAKOFF, individually and as  
trustee of the JOHN G. MAKOFF AND  
JUSTINE MARIE MAKOFF FAMILY  
TRUST U/D/T dated April 1, 1999; JOE  
PHILLIPS, individually and as trustee of the  
JOSEPH GERALD PHILLIPS AND  
LAURA JEAN PHILLIPS REVOCABLE  
TRUST U/D/T dated October 17, 2001,

Defendants.

JOHN G. MAKOFF, an individual;  
JOSEPH G. PHILLIPS, an individual;  
UNIQUE INVESTMENT

CASE NO. 8:18-cv-01180-DOC-KES

~~[PROPOSED]~~ PROTECTIVE  
ORDER

The Honorable David O. Carter  
Mag. Judge Hon. Karen E. Scott

CORPORATION, a California corporation,  
Counterclaim Plaintiffs,  
v.  
DESERET TRUST COMPANY, a Utah  
non-profit corporation, as successor-trustee  
of the MELANIE L. BASTIAN TRUST  
dated July 25, 2001, as amended; C.  
RICHARD BASTIAN, an individual;  
ROBERT A. BASTIAN, an individual;  
DARREN B. BASTIAN, an individual; and  
JEFFREY BASTIAN, an individual, and  
DOES 1 through 10, inclusive,  
Counterclaim Defendants.

Pursuant to the Court's authority under Fed. R. Civ. P. 26(c), and with the  
stipulation and agreement of the parties and good cause, it is hereby **ORDERED**:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential,  
proprietary, or private information for which special protection from public  
disclosure and from use for any purpose other than prosecuting this litigation may  
be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
enter the following Stipulated Protective Order. The parties acknowledge that this  
Order does not confer blanket protections on all disclosures or responses to  
discovery and that the protection it affords from public disclosure and use extends  
only to the limited information or items that are entitled to confidential treatment  
under the applicable legal principles. The parties further acknowledge, as set forth  
in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
file confidential information under seal; Civil Local Rule 79-5 sets forth the  
procedures that must be followed and the standards that will be applied when a  
party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT: This action is likely to involve customer,  
investor, research, financial, commercial, personal, technical, and/or other valuable

1 proprietary information for which special protection from public disclosure and  
2 from use for any purpose other than prosecution of this action is warranted. Such  
3 confidential and proprietary materials and information consist of, among other  
4 things, confidential business or financial information, information regarding  
5 confidential business practices, or other confidential research, development, or  
6 commercial information (including information implicating privacy rights of third  
7 parties), information otherwise generally unavailable to the public, or which may be  
8 privileged or otherwise protected from disclosure under state or federal statutes,  
9 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
10 information, to facilitate the prompt resolution of disputes over confidentiality of  
11 discovery materials, to adequately protect information the parties are entitled to  
12 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
13 of such material in preparation for and in the conduct of trial, to address their  
14 handling at the end of the litigation, and serve the ends of justice, a protective order  
15 for such information is justified in this matter. It is the intent of the parties that  
16 information will not be designated as confidential for tactical reasons and that  
17 nothing be so designated without a good faith belief that it has been maintained in a  
18 confidential, non-public manner, and there is good cause why it should not be part  
19 of the public record of this case.

20 2. DEFINITIONS

21 2.1 Action: The action identified in this caption, *Deseret Trust Company, et*  
22 *al. v. Unique Investment Corporation, et al.*, Case No. 8:18-cv-01180-DOC-KES.  
23 This includes any additional claims that may be brought against or by parties joined  
24 through impleader, intervention, or otherwise.

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
26 of information or items under this Order.

27 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
28 how it is generated, stored or maintained) or tangible things that qualify for

1 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
2 the Good Cause Statement.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
4 support staff).

5 2.5 Designating Party: a Party or Non-Party that designates information or  
6 items that it produces in disclosures or in responses to discovery as  
7 “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of  
9 the medium or manner in which it is generated, stored, or maintained (including,  
10 among other things, testimony, transcripts, and tangible things), that are produced  
11 or generated in disclosures or responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter  
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
14 an expert witness or as a consultant in this Action.

15 2.8 House Counsel: attorneys who are employees of a party to this Action.  
16 House Counsel does not include Outside Counsel of Record or any other outside  
17 counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or  
19 other legal entity not named as a Party to this Action.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
21 to this Action but are retained to represent or advise a party to this Action and have  
22 appeared in this Action on behalf of that party or are affiliated with a law firm  
23 which has appeared on behalf of that party, and includes support staff.

24 2.11 Party: any party to this Action, including all of its officers, directors,  
25 employees, consultants, retained experts, and Outside Counsel of Record (and their  
26 support staffs).

27 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
28 Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

### 4. DURATION

Once a case proceeds to trial, all of the information that was designated as confidential or maintained pursuant to this protective order becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

Except as set forth above, after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a

Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents,  
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
4 the Producing Party affix at a minimum, the legend “CONFIDENTIAL”  
5 (hereinafter “CONFIDENTIAL legend”), to each page that contains protected  
6 material. If only a portion or portions of the material on a page qualifies for  
7 protection, the Producing Party also must clearly identify the protected portion(s)  
8 (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents available for inspection  
10 need not designate them for protection until after the inspecting Party has indicated  
11 which documents it would like copied and produced. During the inspection and  
12 before the designation, all of the material made available for inspection shall be  
13 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
14 documents it wants copied and produced, the Producing Party must determine  
15 which documents, or portions thereof, qualify for protection under this Order. Then,  
16 before producing the specified documents, the Producing Party must affix the  
17 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
18 portion or portions of the material on a page qualifies for protection, the Producing  
19 Party also must clearly identify the protected portion(s) (e.g., by making  
20 appropriate markings in the margins).

21 (b) for testimony given in depositions, the Designating Party must identify  
22 the Disclosure or Discovery Material on the record, before the close of the  
23 deposition.

24 (c) for information produced in some form other than documentary and for  
25 any other tangible items, that the Producing Party affix in a prominent place on the  
26 exterior of the container or containers in which the information is stored the legend  
27 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
28 protection, the Producing Party, to the extent practicable, shall identify the

1 protected portion(s).

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
3 failure to designate qualified information or items does not, standing alone, waive  
4 the Designating Party's right to secure protection under this Order for such  
5 material. Upon timely correction of a designation, the Receiving Party must make  
6 reasonable efforts to assure that the material is treated in accordance with the  
7 provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
10 designation of confidentiality at any time that is consistent with the Court's  
11 Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
13 resolution process under Local Rule 37.1 et seq. or follow the procedures for  
14 informal, telephonic discovery hearings on the Court's website.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on  
16 the Designating Party. Frivolous challenges, and those made for an improper  
17 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
18 parties) may expose the Challenging Party to sanctions. Unless the Designating  
19 Party has waived or withdrawn the confidentiality designation, all parties shall  
20 continue to afford the material in question the level of protection to which it is  
21 entitled under the Producing Party's designation until the Court rules on the  
22 challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
25 disclosed or produced by another Party or by a Non-Party in connection with this  
26 Action only for prosecuting, defending, or attempting to settle this Action. Such  
27 Protected Material may be disclosed only to the categories of persons and under the  
28 conditions described in this Order. When the Action has been terminated, a



1 Receiving Party must comply with the provisions of section 13 below (FINAL  
2 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
3 Party at a location and in a secure manner that ensures that access is limited to the  
4 persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the court or permitted in writing by the Designating Party, a  
7 Receiving Party may disclose any information or item designated  
8 “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
10 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
11 to disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel) of the  
13 Receiving Party to whom disclosure is reasonably necessary for this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom  
15 disclosure is reasonably necessary for this Action and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional  
20 Vendors to whom disclosure is reasonably necessary for this Action and who have  
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a  
23 custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
26 requests that the witness sign the form attached as Exhibit A hereto; and (2) they  
27 will not be permitted to keep any confidential information unless they sign the  
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise

1 agreed by the Designating Party or ordered by the court. Pages of transcribed  
2 deposition testimony or exhibits to depositions that reveal Protected Material may  
3 be separately bound by the court reporter and may not be disclosed to anyone  
4 except as permitted under this Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel,  
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
8 IN OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation  
10 that compels disclosure of any information or items designated in this Action as  
11 “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall  
13 include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to  
15 issue in the other litigation that some or all of the material covered by the subpoena  
16 or order is subject to this Protective Order. Such notification shall include a copy of  
17 this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued  
19 by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with  
21 the subpoena or court order shall not produce any information designated in this  
22 action as “CONFIDENTIAL” before a determination by the court from which the  
23 subpoena or order issued, unless the Party has obtained the Designating Party’s  
24 permission. The Designating Party shall bear the burden and expense of seeking  
25 protection in that court of its confidential material and nothing in these provisions  
26 should be construed as authorizing or encouraging a Receiving Party in this Action  
27 to disobey a lawful directive from another court.  
28

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-  
4 Party in this Action and designated as "CONFIDENTIAL." Such information  
5 produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be  
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to  
9 produce a Non-Party's confidential information in its possession, and the Party is  
10 subject to an agreement with the Non-Party not to produce the Non-Party's  
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality  
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated  
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the  
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within 14  
21 days of receiving the notice and accompanying information, the Receiving Party  
22 may produce the Non-Party's confidential information responsive to the discovery  
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
24 not produce any information in its possession or control that is subject to the  
25 confidentiality agreement with the Non-Party before a determination by the court.  
26 Absent a court order to the contrary, the Non-Party shall bear the burden and  
27 expense of seeking protection in this court of its Protected Material.  
28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on

1 any ground to use in evidence of any of the material covered by this Protective  
2 Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
5 may only be filed under seal pursuant to a court order authorizing the sealing of the  
6 specific Protected Material at issue. If a Party's request to file Protected Material  
7 under seal is denied by the court, then the Receiving Party may file the information  
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 4, within 60  
11 days of a written request by the Designating Party, each Receiving Party must  
12 return all Protected Material to the Producing Party or destroy such material. As  
13 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
14 compilations, summaries, and any other format reproducing or capturing any of the  
15 Protected Material. Whether the Protected Material is returned or destroyed, the  
16 Receiving Party must submit a written certification to the Producing Party (and, if  
17 not the same person or entity, to the Designating Party) by the 60-day deadline that  
18 (1) identifies (by category, where appropriate) all the Protected Material that was  
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
20 copies, abstracts, compilations, summaries or any other format reproducing or  
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
22 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
23 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
24 and trial exhibits, expert reports, attorney work product, and consultant and expert  
25 work product, even if such materials contain Protected Material. Any such archival  
26 copies that contain or constitute Protected Material remain subject to this Protective  
27 Order as set forth in Section 4 (DURATION). Furthermore, notwithstanding this  
28 provision, a Receiving Party shall not be required to return or destroy any Protected

1 Material that is or that constitutes information regarding a business and/or company  
2 in which the Receiving Party owns a membership and/or ownership interest.

3 14. Any violation of this Order may be punished by any and all appropriate  
4 measures including, without limitation, contempt proceedings and/or monetary  
5 sanctions.

6  
7 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

8 Dated: April 25, 2019

*Karen E. Scott*  
KAREN E. SCOTT  
United States Magistrate Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

4821-0571-2277.1